STATE OF MICHIGAN

COURT OF APPEALS

KIMBERLY GOODRICH, formerly known as KIMBERLY JEX,

Plaintiff-Appellant,

v

ANTHONY JEX,

Defendant-Appellee.

UNPUBLISHED
June 12, 2003

No. 243455
St. Clair Circuit Court
LC No. 01-001934-DM

Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

In this divorce action, plaintiff-mother appeals as of right from the trial court's order granting sole physical custody of the parties' three children to defendant-father. We affirm.

Plaintiff first claims that the trial court's finding that neither parent had an established custodial environment with any of the children was against the great weight of the evidence. Plaintiff argues that there was an established custodial environment with both parties with respect to the parties' two daughters and with plaintiff with respect to the parties' son.

When reviewing child-custody decisions, this Court reviews "the trial court's findings of fact to determine whether they are against the great weight of the evidence, the court's discretionary rulings for a palpable abuse of discretion, and questions of law for clear legal error." *Mogle v Scriver*, 241 Mich App 192, 196; 614 NW2d 696 (2000). Whether there is an established custodial environment is a question of fact. *Id.* at 197. "A trial court's findings regarding the existence of an established custodial environment . . . should be affirmed unless the evidence clearly preponderates in the opposite direction." *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000).

A custodial environment is established if it is one of significant duration, both physical and psychological, "in which the relationship between the custodian and the child is marked by qualities of security, stability and permanence." *Baker v Baker*, 411 Mich 567, 579-580; 309 NW2d 532 (1981). An established custodial environment need not be confined to one home, but may exist in more than one household. *Mogle, supra* at 197-198. However, repeated changes in the physical custody of the children and the uncertainty created by an upcoming custody trial will destroy a custodial environment. *Bowers v Bowers*, 198 Mich App 320, 326; 497 NW2d 602 (1993).

Here, the trial court addressed the parties' histories since before plaintiff filed the complaint for divorce, including the changes in residences and living arrangements, as well as the arrangements for the children, and concluded that there was no established custodial environment for any of the children with either parent. Having reviewed the trial court's findings and the record before us, and in light of *Baker, supra*, we cannot say that the evidence clearly preponderates in the opposite direction. *Phillips, supra*.

Next, plaintiff challenges the trial court's findings with respect to nine of the twelve child-custody best interest factors, MCL 722.23(b), (c), (d), (e), (f), (h), (j), (k), and (l). A trial court's findings "regarding each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction." *Phillips, supra*.

MCL 722.23(b) addresses the capacity and disposition of the parties to give love, affection, and guidance and to continue the education and raising of the children in their religion or creed. Despite finding that each party had the capacity to love their children, the trial court weighed this factor in favor of defendant because it concluded that defendant has a greater capacity and willingness to continue to take the parties' daughters to church and related activities. Also, the trial court was concerned with plaintiff's belief that her minor daughters are capable of making their own decisions whether to attend church, and with plaintiff's allowing her minor daughters to bicycle miles from home in heavy traffic areas without supervision. These findings are not against the great weight of the evidence. Although plaintiff complains that the trial court failed to mention that defendant "bad-mouthed" plaintiff in front of their daughters, a trial court is not required to address every argument when making findings on the best interest factors. *Fletcher v Fletcher*, 447 Mich 871, 883 (Brickley, J.), 900 (Griffin, J.); 526 NW2d 889 (1994).

With respect to MCL 722.23(c), the trial court evaluates the capacity and disposition of the parties to provide the child with food, clothing, medical care or other remedial care, and other material needs. Although the trial court did not specifically state so, it is clear from the trial court's ruling and the evidence it considered that it found this factor equal between the parties. Plaintiff argues that the trial court should have found in her favor because she was employed; however, plaintiff has failed to provide citation to support her claim that current employment supersedes the full-time attendance in college to improve job skills and marketability. The record does not indicate that either party was unable to provide for the children, but that they chose different ways to meet their children's needs. The trial court's findings are not against the great weight of the evidence.

The trial court found MCL 722.23(d), "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity" favors defendant. Plaintiff claims that this factor should have been considered equal between the parties. Plaintiff argues that the trial court erred in believing her immediate plans not to remarry translated into the chance that she would be exposing her children to many different relationships between her and other people. The trial court also based its concern on plaintiff's extramarital affair. Given the record before us, we cannot say that the trial court's findings are against the great weight of the evidence. Moreover, circumstances can be relevant under more than one best interests factor. *Fletcher v Fletcher*, 229 Mich App 19, 25-26; 581 NW2d 11 (1998). In any event, any error would have been harmless because even if this factor were considered equal, the majority of the

other factors not found to be equal favored defendant, and only one favored plaintiff. *Fletcher, supra* at 447 Mich 889.

MCL 722.23(e) involves "[t]he permanence, as a family unit, of the existing or proposed custodial home or homes." This factor overlaps to some degree with the previous factor, MCL 722.23(d). *Ireland v Smith*, 451 Mich 457, 465; 547 NW2d 686 (1996). MCL 722.23(e) focuses on the child's prospects for a stable family environment, *id*. at 465, which can be undermined in several ways, such as "frequent moves to unfamiliar settings, a succession of persons residing in the home, live-in romantic companions for the custodial parent, or other potential disruptions," *id.* at 465 n 9. Here, considering plaintiff's comments about marriage, the trial court's findings are not against the great weight of the evidence.

MCL 722.23(f) considers the parties' moral fitness. The trial court weighed this factor in favor of defendant. Even assuming, as plaintiff argues, that the trial court erred in considering plaintiff's extramarital affair, *Fletcher, supra* at 447 Mich 887-888, any error was harmless because the trial court's ruling contained additional reasons for its conclusion. The trial court also found that plaintiff moved out of the marital home and directly into her boyfriend's home and that plaintiff used false allegations of sexual abuse against defendant in an attempt to gain custody of the children. These findings are not against the great weight of the evidence. Moreover, issues of credibility are for the trial court, rather than this Court, to determine. *Fletcher, supra* at 229 Mich App 25.

MCL 722.23(h) examines the child's home, school, and community record. Plaintiff argues that rather than weigh this factor in defendant's favor, the trial court should have weighed it equally for the parties' daughters and in plaintiff's favor concerning their son. Based on the evidence, the court concluded defendant appeared to be more involved in the parties' daughters' school activities because he was assisting them with their homework and attending parent-teacher conferences. The trial court's finding is not against the great weight of the evidence. With respect to the parties' son, plaintiff fails to provide any factual support for her contention that this factor should have weighed in her favor, and thus our review is precluded. *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990) (an appellant may not leave it to this Court to search for a factual basis to sustain or reject her position).

MCL 722.23(j) examines each parties' willingness and ability to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent. Plaintiff suggests that reversal is required because the trial court's conclusion on this factor is unclear. Contrary to plaintiff's argument, the trial court's findings with respect to this factor clearly demonstrate that this factor favors plaintiff. No clarification is needed.

With respect to MCL 722.23(k), concerning domestic violence, the trial court weighed this factor in favor of defendant. The trial court found plaintiff instigated a confrontation between defendant, herself, her boyfriend, and another friend at defendant's home in the presence of at least one of the minor children that resulted in the police being called. Giving due deference to the trial court's superior opportunity to assess the credibility of the witnesses before it, *Fletcher, supra* at 229 Mich App 25, the trial court's findings are not against the great weight of the evidence.

Finally, plaintiff contends the trial court erred in weighing MCL 722.23(l), "[a]ny other factor considered by the court to be relevant to a particular child custody dispute," in favor of defendant merely because defendant started the girls in counseling. The trial court appropriately utilized this factor and its finding is not against the great weight of the evidence.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell